FILE COPY

No. 838

Supreme Court,
FILED
MAR 25 193
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM—1935.

FREDERICK L. MOREHEAD, as the Warden of the City Prison of the Borough of Brooklyn,

Petitioner,

against

PEOPLE ex rel. JOSEPH TIPALDO,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

CAMPBELL & BOLAND,
Attorneys for the New York State Hotel Association, as amicus curiae,
500 Fifth Avenue,
New York City.

CHARLES J. CAMPBELL,
Counsel.

ACKERMAN PRESS, Inc., 142 Liberty St., 'Phones Rector 2-5856-7

INDEX.

	PAGE
Statement	1
Argument	2
Brief in Opposition:	
1. Same issues as Adkins case	2
2. New York statute purely wage fixing	4
3. New York statute has double standard; i. e., cost of living and value of services	4
4. Factual background same as in Adkins case	5
5. Constitutional rights unaffected by economic inequalities	5
6. Court of Appeals holds law violates State Constitution	6

CITATIONS.

Adkins v. Children's Hospital, 261 U. S. 525	2
Coppage v. Kansas, 236 U. S. 1	5
Charles Wolf Packing Co. v. Court of Industrial Relations of Kansas, 262 U. S. 522	3
Donham v. West-Nelson Mfg. Co., 273 U. S. 657	3
Muller v. Oregon, 208 U. S. 412	5
Murphy, as Attorney General, v. Sardell, 269 U. S. 530	3
Near v. Minnesota, 283 U. S. 697, 707, 708	3
Ribnick v. McBride, 277 U. S. 350	3
Tyson v. Banton, 273 U. S. 418	3

IN THE

Supreme Court of the United States

OCTOBER TERM—1935.

FREDERICK L. MOREHEAD, as the Warden of the City Prison of the Borough of Brooklyn,

Petitioner,

against

PEOPLE ex rel. JOSEPH TIPALDO,

Respondent.

BRIEF OF NEW YORK STATE HOTEL ASSOCIATION, AS AMICUS CURIAE, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Statement.

The New York State Hotel Association, which appeared herein as amicus curiae in the Court of Appeals, submits by consent this brief in opposition to the petition of the Attorney General of New York for a writ of ceritorari to review a decision by the New York Court of Appeals sustaining the contention of the respondent that the Minimum Wage Law of the State of New York violates his rights under the Fourteenth Amendment of the Federal Constitution and Article 1, Section 6 of the State Constitution (see Majority Opinion, p. 53, Petition).

Respondent consents to issuance of the writ, but the law is applicable to all industries in the State, including the hotel and restaurant industries, in which it is estimated more than 60,000 adult women are employed. Their rights and those of their employers should not be foreclosed by any concession of the respondent.

Argument.

1. The issues presented here are the same as those decided in *Adkins* v. *Children's Hospital*, 261 U. S. 525.

2. The New York Minimum Wage Statute, like the Act of Congress, which was considered in the Adkins case, is purely a wage fixing law.

3. The Act of Congress had one standard, the living wage; this State has added another, reasonable value. The New York Minimum Wage must include both.

4. The factual background recited in the preamble of the New York Statute is practically the same as that presented in the Adkins case.

5. The rights guaranteed under the Fourteenth Amendment of the Federal Constitution and Article I, Section 6 of the State Constitution are not affected by the ebb and flow of economic tides.

6. The law violates the State Constitution.

POINT I.

The issues presented here are the same as those decided in Adkins v. Children's Hospital, 261 U. S. 525.

In the Adkins case the Court found that all the labor cases in which interference with due process had been upheld fell within one or another of the following four categories:

1. Statutes fixing rates and charges by business impressed with public interest.

2. Statutes limited to contracts for performance of public work.

3. Statutes prescribing the character, methods and time of payment of wages.

4. Statutes fixing hours of labor.

The Court determined that the District of Columbia Statute was not within any of the foregoing classes, and was purely a wage fixing statute.

The Court followed the Adkins case in:

Charles Wolf Packing Co. v. *Court of Industrial Relations of State of Kansas,* 262 U. S. 522;
Murphy, as Attorney General, v. *Sardell,* 269 U. S. 530;
Donham v. *West-Nelson Manufacturing Co.,* 273 U. S. 657;
Ribnick v. *McBride,* 277 U. S. 350;
Tyson v. *Banton,* 273 U. S. 418.

In *Near* v. *Minnesota* (283 U. S. 697, 707, 708), the Chief Justice discussing liberty of contract, cited Adkins, Tyson and Ribnik cases, saying:

"So, while liberty of contract is not an absolute right, and the wide field of activity in the making of contracts is subject to legislative supervision (*Frisbie* v. *United States,* 157 U. S. 161, 165), this Court has held that the power of the State stops short of interference with what are deemed to be certain indispensable requirements of the liberty assured *notably with respect to the fixing of prices and wages.*" (Italics ours.)

POINT II.

The New York Minimum Wage Statute, like the Act of Congress which was considered in the Adkins case, is purely a wage fixing law.

The New York Minimum Wage Law appears at page 27 of the petition for the writ.

It does not regulate hours or conditions of labor. It is not emergency legislation.

It is designed only for one purpose, *the fixing of the amount of wages by law instead of by contract.*

POINT III.

The Act of Congress had one standard, the living wage; this State has added another, reasonable value. The New York Minimum Wage must include both.

In the majority opinion the New York Court of Appeals said:

> "The New York Act, as above stated, prohibits an oppressive and unreasonable wage, which means *both* less than the fair and reasonable value of the services rendered *and* less than sufficient to meet the minimum cost of living necessary for health. The Act of Congress had one standard, the living wage; this Act has added another, reasonable value. The Minimum Wage must include both" (p. 56, Petition for Writ).

Supporting this finding see subdivisions 7 and 8 of Section 551 (p. 30 of Petition), and Section 552 (p. 31 of Petition).

POINT IV.

The factual background recited in the preamble of the New York Statute is practically the same as that presented in the Adkins case.

The preamble of the New York Statute (Section 550, p. 28, Petition) recites essentially the same factual background urged upon the Court in the Adkins case. It is all found in more than 1,100 pages of material submitted by Mr. Frankfurter in that case.

Summed up it is inequality of bargaining power, and unfair competition due to differentials in wages. These conditions are as old as business itself and are inevitable under our American system.

Practically the same factual background was submitted to the Court in *Coppage* v. *Kansas*, 236 U. S. 1, and *Muller* v. *Oregon*, 208 U. S. 412.

POINT V.

The rights guaranteed under the Fourteenth Amendment of the Federal Constitution and Article I, Section 6 of the State Constitution are not affected by the ebb and flow of economic tides.

The Attorney General argues that economic stress calls for re-appraisal of laws fixing minimum wages for women, and that "new and changing conditions create new public needs and justify new restrictions on the rights of individuals for the common good".

Inequalities of fortune have always existed under our constitutional system, in good times and bad, but we submit that new restrictions on the rights of individuals in the enjoyment of liberty and property guaranteed by the Constitution will not promote the common good or general welfare.

The question at issue is whether the State has power under the Constitution to enact a wage fixing law in its attempt to adjust inequalities of fortune and eliminate unfair competition; and not whether such legislation is reasonable, desirable or socially popular.

POINT VI.

The Court of Appeals holds that the law contravenes Article 1, Section 6 of the State Constitution.

The due process clause of the State Constitution and of the Fifth and Fourteenth Amendments of the Federal Constitution are identical in the provision that no one shall "be deprived of life, liberty or property without due process of law".

In its opinion the Court of Appeals points out the respondent's contention that the Minimum Wage Law violates both his Federal and State Constitutional rights (p. 53, Petition).

The Court of Appeals has adopted the same interpretation of the State Constitution that the Supreme Court applied to the Fifth Amendment in the Adkins case.

CONCLUSION.

The determination of the State Court of Last Resort that the State Minimum Wage Law deprives the respondent of his rights under the Federal and State Constitutions calls for no review by the United States Supreme Court.

Respectfully submitted,

CAMPBELL & BOLAND,
Attorneys for the New York State
Hotel Association, as amicus curiae,
500 Fifth Avenue,
New York City.

CHARLES J. CAMPBELL,
Counsel.